

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RONNIE L. BROWN,)
Plaintiff,)
vs.)
LIBERTY COUNTY MUTUAL)
INSURANCE COMPANY,)
Defendant.)
)
)
Case No.: 2:20-cv-00163-GMN-DJA
)
)
ORDER
)

Pending before the Court is Defendant Liberty County Mutual Insurance Company’s (“Defendant’s”) Motion to Dismiss, (ECF No. 6). Plaintiff Ronnie Brown (“Plaintiff”) filed a Response, (ECF No. 9), and Defendant filed a Reply, (ECF No. 10).

Also pending before the Court is Defendant's Motion to Strike, (ECF No. 15), the Amended Complaint, (ECF No. 14). Plaintiff filed a Response, (ECF No. 17), and Defendant filed a Reply, (ECF No. 18).

Also pending before the Court is Plaintiff's Motion for Leave to File an Amended Complaint, (ECF No. 16). Defendant filed a Response, (ECF No. 20), and Plaintiff filed a Reply, (ECF No. 21).

For the reasons discussed below the Court **GRANTS** Defendant's Motion to Strike and Plaintiff's Motion for Leave to File an Amended Complaint. The Court **DENIES as moot** Defendant's Motion to Dismiss.

I. BACKGROUND

This case arises from Plaintiff's claim to underinsured motorist insurance coverage benefits after sustaining injuries in a motor vehicle accident that occurred in Grapevine, Texas. (Compl. ¶¶ 6, 8–10, ECF No. 1). Plaintiff, whose damages from the accident allegedly total

1 \$195,000.00, sought insurance coverage benefits from Defendant up to the policy limit of
 2 \$100,000.00. (*Id.* ¶¶ 12–13). Plaintiff alleges that Defendant offered only \$500.00 in coverage
 3 benefits to Plaintiff. (*Id.* ¶ 14).

4 Plaintiff commenced this action by filing the Complaint on January 23, 2020. (*See*
 5 *generally id.*, ECF No. 1). The Complaint seeks to recover damages for Defendant’s alleged
 6 breach of the implied covenant of good faith and fair dealing, breach of contract, and breach of
 7 statutory duties under Texas law. (*Id.* ¶¶ 25–46). Plaintiff’s original Complaint also asserts
 8 claims for declaratory and injunctive relief, supplemental relief, and punitive damages. (*Id.* ¶¶
 9 47–62).

10 On February 18, 2020, Defendant moved to dismiss the Complaint, arguing: (1) the
 11 Court does not have personal jurisdiction over Defendant; (2) Plaintiff failed to properly serve
 12 process; and (3) the Complaint fails to state plausible claims for declaratory and injunctive
 13 relief. (*See* Mot. Dismiss (“MTD”) 3:1–11:2, ECF No. 6). The Motion to Dismiss is fully
 14 briefed. (*See* MTD Resp., ECF No. 9); (MTD Reply, ECF No. 10).

15 On May 5, 2020, Plaintiff attempted to file an Amended Complaint without seeking
 16 leave of Court or consent of Defendant. (*See* Am. Compl., ECF No. 14). Defendant moved to
 17 strike the Complaint because it was improperly filed. (*See* Mot. Strike, ECF No. 15). Plaintiff
 18 concedes that the Amended Complaint was improperly filed, and he asks that the Amended
 19 Complaint be stricken. (Resp. Mot. Strike 4:4–5, ECF No. 17) (“Plaintiff apologize [sic] to the
 20 Court and opposing Counsel for this oversight, and respectfully request [sic] that the Court
 21 strike said pleading without prejudice.”).¹

22 Plaintiff now seeks leave of Court to file the Amended Complaint, (*See* Mot. Leave File
 23 Am. Compl. (“Mot. Am.”), ECF No. 16). Defendant opposes the Motion, arguing that the
 24

25 ¹ Given Plaintiff’s request that the Amended Complaint be stricken, the Court **GRANTS** Defendant’s Motion to Strike, (ECF No. 15).

1 proposed amendment would be futile and prejudice Defendant. (*See* Resp. Mot. Am. 1:2–11,
 2 ECF No. 20).

3 **II. LEGAL STANDARD**

4 Federal Rule of Civil Procedure 15(a) provides that the court “should freely give leave
 5 [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). “Four factors are commonly
 6 used to determine the propriety of a motion for leave to amend. These are: bad faith, undue
 7 delay, prejudice to the opposing party, and futility of amendment. These factors, however, are
 8 not of equal weight in that delay, by itself, is insufficient to justify denial of leave to amend.”
 9 *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (citation omitted). “[I]t is
 10 the consideration of prejudice to the opposing party that carries the greatest weight.” *Eminence*
 11 *Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). “The party opposing
 12 amendment bears the burden of showing prejudice.” *DCD Programs*, 833 F.2d at 187.

13 In addition to the Rule 15(a) requirements, the District of Nevada’s Local Rules require
 14 that a plaintiff submit a proposed amended complaint along with a motion to amend. LR 15-
 15 1(a). If the court grants leave to amend, “the moving party must then file and serve the
 16 amended pleading.” LR 15-1(b).

17 **III. DISCUSSION**

18 Defendant argues in the Motion to Dismiss that the Court lacks personal jurisdiction
 19 because Defendant is neither a citizen of Nevada nor has sufficient minimum contacts with the
 20 forum state. (MTD 4:21–7:28). Defendant argues in its Response to Plaintiff’s Motion to
 21 Amend that the Court should deny leave to amend because the proposed amendment does not
 22 cure the jurisdictional pleading deficiencies, Plaintiff’s request is in bad faith, and granting
 23 leave to amend would prejudice defendant. (Resp. Mot. Am. 4:6–10:23, ECF No. 20).² The

25 ² Defendant does not raise improper service or failure to state a claim in support of its argument that the
 proposed amendment would be futile. (*Compare* MTD 8:1–10:25); (*with* Resp. Mot. Am. 6:20–8:23).

1 Court begins its discussion with the Motion to Amend because, if granted, Defendant's Motion
 2 to Dismiss will become moot.

3 Pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, a defendant may
 4 move to dismiss a complaint for lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). In
 5 opposition to a defendant's motion to dismiss for lack of personal jurisdiction, the plaintiff
 6 bears the burden of establishing that jurisdiction is proper. *See Sher v. Johnson*, 911 F.2d 1357,
 7 1361 (9th Cir. 1990). If the district court decides the motion without an evidentiary hearing,
 8 which is the case here, then "the plaintiff need only make a prima facie showing of the
 9 jurisdictional facts." *Id.* (citation omitted). Absent an evidentiary hearing this court "only
 10 inquire[s] into whether [the plaintiff's] pleadings and affidavits make a prima facie showing of
 11 personal jurisdiction." *Caruth v. Int'l Psychoanalytical Ass'n*, 59 F.3d 126, 127–28 (9th Cir.
 12 1995). Uncontested allegations in the plaintiff's complaint must be taken as true. *See AT&T*
 13 *v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1995). "Conflicts between parties
 14 over statements contained in affidavits must be resolved in the plaintiff's favor."
 15 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004).

16 When no federal statute governs personal jurisdiction, the district court applies the law
 17 of the forum state. *See Panavision Int'l L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998).
 18 Nevada has authorized its courts to exercise jurisdiction over persons "on any basis not
 19 inconsistent with . . . the Constitution of the United States." Nev. Rev. Stat. § 14.065. Thus, the
 20 Due Process Clause of the Fourteenth Amendment is the relevant constraint on Nevada's
 21 authority to bind a nonresident defendant to a judgment of its courts. *Cf. World-Wide*
 22 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980). The Due Process Clause requires
 23 that the nonresident must have "certain minimum contacts . . . such that the maintenance of the
 24 suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v.*
 25 *Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

1 A court determines sufficient minimum contacts either through “specific jurisdiction,” where
 2 the defendant’s specific interaction with the forum relating to the cause of action gives rise to
 3 the contacts; or through “general jurisdiction,” where the contacts with the forum are
 4 systematic and continuous, warranting the exercise of personal jurisdiction. *See id.* Here, only
 5 specific jurisdiction is at issue. (See Proposed Am. Compl. (“Am. Compl.”) ¶¶ 3–8, Ex. 2 to
 6 Mot. Am., ECF No. 16) (“In light of the above, Plaintiff believes, and thereon asserts, that
 7 Defendant LIBERTY purposefully availed itself of opportunities to conduct business in the
 8 State of Nevada, and is therefore subject to personal specific jurisdiction in Nevada on claims
 9 arising out of that contact.”).

10 To establish specific jurisdiction, the Proposed Amended Complaint alleges that, when
 11 Defendant offered Plaintiff an insurance policy and accepted Plaintiff’s premium payments,
 12 “Defendant LIBERTY knew that: (a) Plaintiff was a resident of Nevada; (b) the subject
 13 automobile would be operated and maintained on a regular basis by Plaintiff in Nevada, and (c)
 14 Plaintiff was responsible and would be making payment of all premiums associated with the
 15 2014 policy changes in question.” (Am. Compl. ¶ 14); (*see also id.* ¶¶ 3–8, 11–13). Defendant
 16 responds that the Amended Complaint is futile because “Plaintiff appears to attempt
 17 amendment solely for the purpose of supplementing his position regarding personal jurisdiction
 18 by reference to an alleged phone call, the desired new allegation is immaterial, and therefore
 19 futile.” (Resp. Mot. Amend. 7:6–9).³ The Court concludes that, in the absence of evidence to
 20 the contrary, Plaintiff’s allegations establish the Court’s specific jurisdiction over Defendant.

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 23 ³ Defendant appears to be referencing the following allegation in the Amended Complaint: “Sometime prior to
 24 May 30, 2014, a long-distance telephone conference was held between the Plaintiff, Defendant’s named insured
 25 under it’s [sic] 2014 existing policy, and Defendant’s insurance sales agent, wherein said sales agent discussed
 and obtained from the Plaintiff certain insurance rating and other information regarding Plaintiff and his 2008
 Mercedes Benz S-550 automobile . . . including whether he desired additional or increased coverages on said
 policy.” (Am. Compl. ¶ 12).

1 In *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957), the United States
 2 Supreme Court held that a defendant-insurer has sufficient contacts with the forum state to
 3 confer specific jurisdiction when the defendant issued an insurance policy with knowledge that
 4 the plaintiff resided in the forum state, accepted premium payments from the forum, and knew
 5 that insurance benefits would be paid in the forum. 355 U.S. 220, 223 (1957) (“It is sufficient
 6 for purposes of due process that the suit was based on a contract which had substantial
 7 connection with that State. . . . The contract was delivered in California, the premiums were
 8 mailed from there and the insured was a resident of that State when he died.”). Here, Plaintiff
 9 alleges that Defendant issued Plaintiff an insurance policy with knowledge that he resided in
 10 Nevada, accepted premium payments from Nevada, and knew that the insured’s vehicle would
 11 be used in Nevada. (Am. Compl. ¶ 14). Accordingly, irrespective of whether the long-distance
 12 call was a sufficient minimum contact to establish specific jurisdiction, Plaintiff’s other
 13 allegations confer this Court’s jurisdiction over Defendant.

14 The Court must accept Plaintiff’s allegations in the Proposed Amended Complaint as
 15 true because Defendant has not produced evidence to the contrary. *AT&T*, 94 F.3d at 588.
 16 Defendant alleges that “Plaintiff seeks benefits pursuant to a Texas policy issued to a Texas
 17 resident (someone else), for a Texas accident that occurred in 2018” (Resp. Mot. Am.
 18 8:15–20). However, the disputed insurance policy itself and related documentation are not
 19 among the Exhibits that Defendant produced in support of its Motion to Dismiss. (See Exs. 1–4
 20 to Mot. Dismiss, ECF Nos. 6-1–6-4).⁴ The Court therefore is left without evidence to evaluate
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22 ⁴ Defendant’s proffered evidence accompanying the Motion to Dismiss does little to support its position. Exhibit
 23 1, entitled “Nevada Division of Insurance Analysis,” merely provides screenshots showing that Defendant’s
 24 business does not appear from a search of the Nevada Division of Insurance website. (See Nev. Div. Ins.
 25 Analysis, Ex. 1 to MTD, ECF No. 6-1). Defendant does not explain the meaning of the Exhibit, and it may only
 show that Defendant is not “at home” and subject to general jurisdiction in Nevada. The same is true of Exhibits
 2 and 3—Defendant’s Annual Statement and the Texas Division of Insurance Report—which show that
 Defendant is, in fact, a Texas company. (Annual Statement and Texas Div. Ins. Report, Exs. 2–3 to MTD, ECF
 No. 6-2, 6-3).

1 the veracity of Defendant's allegations and must accept Plaintiff's allegations as true. *See*
 2 *Schwarzenegger*, 374 F.3d at 800. Thus, the Court may presently exercise personal jurisdiction
 3 over Defendant.

4 Given that the Court finds that the Proposed Amended Complaint establishes personal
 5 jurisdiction, and Defendant's argument that amendment would be futile depends exclusively on
 6 the Court's alleged absence of personal jurisdiction over Defendant, Defendant has not shown
 7 futility of amendment. Nor can Defendant establish prejudice. Defendant argues that granting
 8 leave to amend will cause prejudice because amendment will moot the fully briefed motion to
 9 dismiss and delay dismissal of the Complaint. (*See* Mot. Am. 5:25–6:19). The argument
 10 incorrectly assumes that Plaintiff's proposed amendment is futile for failure to adequately
 11 allege personal jurisdiction. (*See id.* 6:5–16) (“Delay in this regard is also not justifiable
 12 because the proposed amendment cannot resolve the dispute regarding the ability for any
 13 personal jurisdiction for Defendant . . .”). Given that the Court has concluded above that the
 14 proposed amendment alleges sufficient facts for the Court to exercise personal jurisdiction over
 15 Defendant, it would be error for the Court to dismiss without leave to amend. *Swartz v. KPMG*
 16 *LLP*, 476 F.3d 756, 760 (9th Cir. 2007) (quoting *McKesson HBOC, Inc. v. N.Y. State Common*
 17 *Ret. Fund, Inc.*, 339 F.3d 1087, 1090 (9th Cir. 2003)) (“Assuming a substantive or
 18 jurisdictional defect in the pleadings, “[d]ismissal without leave to amend is proper only if it is
 19 clear, upon de novo review, that the complaint could not be saved by any amendment.”).

20 Here, because the Amended Complaint shows that Plaintiff can amend the Complaint in
 21 a manner that confers personal jurisdiction over Defendant, the Court must provide leave to
 22 amend. Although Plaintiff is correct that the Motion to Amend provides Plaintiff a means to
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24 Defendant does produce a payment notice that Kenneth W. Chism (“Chism”) is the insured and made a payment
 25 under the policy. (See Ex. 1 to MTD Reply, ECF No. 10-1). However the evidence is not sufficient to rebut the
 allegations in the Proposed Amended Complaint because it does not show: (1) where Chism lived; (2) that
 Defendant did not know the vehicle would be serviced and operated in Nevada; or (3) that Plaintiff did not make
 other premium payments on the policy from Nevada with Defendant's knowledge.

1 overcome a deficient Response to the Motion to Dismiss, that alone does not establish
2 prejudice. Thus, Defendant has not established any factor that cautions against providing leave
3 to amend. The Court therefore grants Plaintiff's request for leave to amend and denies the
4 pending Motion to Dismiss as moot.

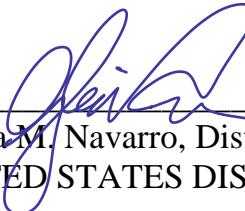
5 **IV. CONCLUSION**

6 **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss, (ECF No. 6), is
7 **DENIED as moot.**

8 **IT IS FURTHER ORDERED** that Defendant's Motion to Strike, (ECF No. 15), is
9 **GRANTED.**

10 **IT IS FURTHER ORDERED** that Defendant's Motion for Leave to File an Amended
11 Complaint, (ECF No. 16), is **GRANTED**. Plaintiff shall file the Amended Complaint within
12 twenty-one (21) days from entry of this Order.

13 **DATED** this 20 day of September, 2020.

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18 **Gloria M. Navarro, District Judge**
19 **UNITED STATES DISTRICT COURT**